



PHILJA E-Alerts

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SHERIFF

• Gross neglect of duty and gross incompetence in the performance of official duties

Records show that respondent sheriff failed to follow the procedures laid down under Section 9, Rule 39 of the Rules of Court for the proper implementation of the writ of execution and Section 11, Rule 13 of the same rules for the proper service of notices as discussed by the Investigating Judge and the OCA. Respondent sheriff, therefore, is liable for gross neglect of duty and gross incompetence in the performance of his official duties.

First. Section 9, Rule 39 of the Revised Rules of Court prescribes the procedure for executing judgments for money, x x x

x x x x

The rule commands that the executing officer shall enforce the judgments for money in this order: First, the officer must demand from the judgment obligor to pay in cash the judgment obligation; Second, if the judgment obligor fails to pay in cash, the officer shall proceed to levy on the personal properties of the judgment obligor; and Third, if there are no personal properties, the officer shall then levy on the real properties of the judgment obligor.

Here, respondent sheriff did not attempt to demand from XXX or complainant for payment of the judgment obligation nor levy on XXX's personal properties. Instead, respondent sheriff immediately sent XXX and its counsel on record, Atty. A, copies of the notice of levy, writ of execution and Order, respectively. Albeit, they were all returned to sender.

Respondent sheriff, nonetheless, claims that it was futile to demand a cash payment from XXX allegedly because its address was unknown. In fact, the notices he sent were allegedly all returned to sender. Nothing here, however, justifies respondent sheriff's patent violation of the procedure in the execution of judgment for money. This only shows that respondent directly sent notice of levy, instead of demanding for cash payment first.

Well-settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed to execute them in accordance with the rules. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff—he must see to it that its mandate is obeyed.

Second. Even respondent sheriff's service of the notices was also improper. Under Section 5 of Rule 13 of the Revised Rules of Court, service of notices shall either be done personally or by registered mail. Here, aside from failing to demand cash payment first from XXX, respondent sheriff also erroneously served the notices through LBC without any explanation why personal service or service by registered mail was not made in violation of Sections 8 and 11, Rule 13 of the Rules of Court, x x x

x x x x

Respondent sheriff failed to explain why he served the notice of levy through LBC, a private courier. A party who resorts to service through private courier should have justifiable reason and should explain why proper modes of services were not availed of. As it was, respondent sheriff failed to provide justification for his resort to service via private courier. Both the Investigating Judge and the OCA, thus, correctly observed that respondent sheriff did not exert diligent efforts to locate XXX's new address. Had respondent sheriff resorted to personal service, he could have easily located complainant and XXX's new address because it is just beside their previous office address.

x x x x

Finally, even granting that levy can be made directly on XXX's real property, the sheriff is mandated to sell only such portion of the personal or real property of the judgment obligor sufficient to satisfy the judgment and lawful fees.

Here, the judgment debt was only P765,159.55, while the property levied upon had a fair market value of P19,890,000.00. Undeniably, respondent sheriff made an excessive levy on the property in question. On this score, respondent sheriff cannot negate liability by simply asserting that he did not have any authority to even ascertain how much the property actually cost. Paragraphs 2 and 3, item b, Section 9, Rule 39 of the Revised Rules of Court provides:

The Sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

Evidently, the executing officer is duty-bound to determine the value of the property being levied to determine if it is sufficient to satisfy the money judgment and lawful fees.

Hence, whichever way it goes, respondent sheriff committed illegal procedural shortcuts in the enforcement of the writ of execution. A sheriff cannot just unilaterally and whimsically choose how to enforce the writ without observing the proper procedural steps laid down by the rules, otherwise, it would amount to gross neglect of duty.

x x x x

The OCA stressed that respondent has been a sheriff since 1987, his long years in the service should have equipped him already with the requisite knowledge in the execution of money judgments. Despite the clear provisions of the law, respondent sheriff insists on the correctness of his action in directly levying on XXX's real property.

Undoubtedly, respondent sheriff exhibited arrogance, if not incompetence in the performance of his official duties.

x x x x

Respondent sheriff committed two offenses: a) gross neglect of duty; and b) gross incompetence in the performance of official duties.

x x x x

On humanitarian and equitable considerations here, *i.e.*, respondent sheriff's advanced age, and, in view of the mitigating circumstances of: a) being a first time offender, and b) respondent sheriff's

considerable length of government service, we adopt the OCA's recommendation to impose the penalty of suspension from the service for six months and one day without pay.

Respondent sheriff was found guilty of gross neglect of duty and gross incompetence in the performance of official duties. He was meted the penalty of suspension of six months and one day without pay with stern warning that a repetition of the same or any similar act would be dealt with more severely. **[A.M. No. P-11-2968 (Formerly OCA I.P.I. No. 10-3535-P), November 28, 2019]**

COURT STENOGRAPHER

- **Immorality**

Respondent court stenographer is charged with immorality for allegedly engaging in an illicit relation with AAA, husband of complainant BBB.

x x x x

Court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; a court employee is also judged by his or her private morals. These exacting standards of morality and decency have been strictly adhered to and laid down by the Court to those in the service of the judiciary.

Here, BBB's Sworn-Complaint essentially alleged that respondent court stenographer had maintained an affair with her husband AAA. Indubitably, such charge, if proven, constitutes immorality that warrant disciplinary action. Thus, in *Banaag v. Espeleta*, respondent court interpreter therein was found guilty of immorality for engaging in an amorous relationship with a married man. Similarly, in *Sealana-Abbu v. Laurenciana-Hurafio*, the Court suspended two court stenographers who were engaged in an illicit relationship.

The required quantum of proof to sustain a finding of guilt in administrative disciplinary proceedings is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Here, the Court finds that evidence on record satisfies this requirement despite the recantation of complainant BBB and her witnesses.

Mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member or employee of the judiciary. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his or her own, condone what may be detestable under our Code of Conduct and most especially our laws. Otherwise, the efforts of this Court in improving the delivery of justice would be put to naught by private arrangements between parties to disciplinary proceedings.

A recantation, like any other testimony, is subject to the test of credibility. Although findings on credibility of witnesses are generally entitled to great weight, the Court will not shy away from re-examining such findings when cogent reasons call for it, as here.

x x x x

The Court, therefore, rejects BBB's recantation and finds the allegations in her Sworn-Complaint dated November 14, 2003, as supported by her testimony and those of her witnesses during the first investigation, more credible.

But even if the Court disregards the testimony of BBB, the admissions of AAA and respondent court stenographer are independently sufficient to establish respondent court stenographer's guilt.

During the initial investigation, AAA admitted to courting respondent court stenographer after the latter helped him reach a settlement for the reckless imprudence case against him. According to AAA, they started their relationship in 2001 and from then on, he would fetch respondent court stenographer from work and brought her home.

X X X X

From these circumstances, the Court is convinced that respondent court stenographer and AAA had an illicit affair. Respondent court stenographer is, therefore, and indeed, guilty of immorality.

Under Civil Service Commission (CSC) Resolution No. 991936 dated August 31, 1999, otherwise known the Revised Uniform Rules on Administrative Cases in the CSC which is applicable at the time the offense was committed, disgraceful and immoral conduct merits a penalty of suspension for 6 months and 1 day to 1 year for the first offense. Thus, in *Elape v. Elape*, respondent process server was suspended for six months and one day for maintaining an illicit relationship. In *Banaag v. Espeleta*, respondent court interpreter therein would have been suspended for 6 months and 1 day for immorality had she not peremptorily resigned from her post.

The Court found respondent court stenographer guilty of immorality and was suspended for 6 months and 1 day without pay with stern warning that commission of the same or similar offenses shall be dealt with more severely. **[A.M. No. P-19-4020 (Formerly OCA I.P.I. No. 03-1824-P), November 28, 2019]**